



Assessment Conference Determination

Company: A & G Coal Corporation **Permit No.:** 1102054

Penalty of: Notice of Violation RWH0007069 **Violation No.:** 2 Violations (HR, SS)

Conference: March 27, 2012 @ 10:00AM **Location:** DMME BSG Office

Participants: Mark Wooten (A & G Coal Corp.); Wayne Herrell (DMLR Inspector)

Summary of Conference

Mark Wooten stated that he was prepared to argue the facts of the violation for Notice of Violation RWH0007069 violation 1 of 2 and did not have any argument to present on violation 2 of 2. I explained to Mr. Wooten that the DMLR Hearings Coordinator, Harve Mooney, had informed me that only an assessment conference had been requested for the referenced Notice of Violation. I told Mr. Wooten that I would therefore only be able to hear arguments pertaining to the assessment of the referenced Notice of Violation. I told Mr. Wooten that I would check with Mr. Mooney to confirm that only an assessment conference had been requested by the company. Mr. Wooten stated that he would therefore provide arguments to support the company's position that no assessment should have been imposed on Notice of Violation RWH0007069 1 of 2. Upon completion of the conference I confirmed with Harve Mooney that the company had only made a request for an assessment conference and had not made a request for a hearing to review the facts of the violation. I therefore, proceeded to hear Mr. Wooten's arguments pertaining to the assessment of Notice of Violation RWH0007069 violation 1 of 2.

Mr. Wooten began by stating that no assessment should have been imposed on the notice of violation addressing the certification of Internal Haulroad C. Mr. Wooten explained that A & G Coal Corp., P.N. 1102054 was transferred from Meg-Lynn Land Company, Inc., P.N. 1101804. Mr. Wooten explained that Internal Haulroad C was designed and certified in permit number 1101804. Mr. Wooten said the original design for Internal Haulroad C was addressed in Revision Application #1003255 included in permit number 1101804. Mr. Wooten explained that Revision Application #1003255 also stated that Internal Haulroad C was to be maintained for an industrial land use to access a gas well.

Mr. Wooten stated that Revision Application #1004827 for permit number 1101804 contained a PDF file that had on it "haulroad certification for Internal Haulroad C". Mr. Wooten said the revision also included the as-built drawing, profile, and other information required for a haulroad certification. Mr. Wooten said this document therefore served as certification for Internal Haulroad C. Mr. Wooten said he could not find the actual DMLR haulroad certification sheet in permit 1101804, but the PDF document he referenced should serve to certify the haulroad. Mr. Wooten said the haulroad certification is actually on the subdirectory of his computer, but for whatever reason was never attached to the revision. Mr. Wooten said there should not be any civil penalty assessed on Notice of Violation RWH0007069 violation 1 of 2.

Assessment Conference Recommendation

As I explained to Mr. Wooten, the company had not requested an informal hearing to review the “facts of the violation” but had requested an assessment conference regarding Notice of Violation RWH0007069 violation 1 and 2 of 2. Although I have reviewed the information presented at the conference and other pertinent facts, I cannot rule on the validity of the Notice of Violation’s issuance. Therefore, my review and recommendation is regarding the civil penalty determination for the referenced notice of violation.

As noted during the conference, A & G Coal Corp., P.N. 1102054 was transferred from Meg-Lynn Land Company, Inc., P.N. 1101804. I therefore reviewed the two permit applications referenced by Mr. Wooten which were found in permit number 1101804. Revision Application #1003255 (approved on June 13, 2006) provided the original design information for Internal Haulroad C. This application also stated that Internal Haulroad C was to be retained to provide access to industrial facilities (natural gas well and pipelines).

Application #1004827 (approved on October 24, 2008) addressed the anniversary reports and added internal haulroads. This application contained a field design, profile and other information regarding Internal Haulroad C. This application did contain a PDF file titled “Haulroad Details” which did contain a haulroad profile for Internal Haulroad C. The Haulroad Details document had the file name “Haulroad_Certification_1004827-3”. The application does not contain a “Road Construction Certification Form” (DMLR-PT-098) or other statement signed by a professional engineer stating that the haulroad was constructed in accordance with the original design or an “as-built” design. Therefore, it is unclear whether this application was to serve as the certification for Internal Haulroad C.

Section 4VAC25-130-816.151 of the **Virginia Coal Surface Mining Reclamation Regulations** states, *“The construction or reconstruction of primary roads shall be certified in a report to the division by a qualified registered professional engineer. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plans.”* DMLR Procedure 3.03.07 states that the required haulroad certification report shall be documented and submitted to the Division on a DMLR-PT-098 form titled “Road Construction Certification.” There is no evidence to indicate that the operator submitted the required Haulroad Certification Report for Internal Haulroad C.

In completing my review, I have considered the testimony given and the facts from my review of the applicable permit plans and records. In accordance with Assessment Conference Procedures I have reviewed the assessment criteria for each civil penalty and offer the following recommendation regarding the appropriateness of each penalty’s seriousness, negligence, history, and good faith determinations.

For Notice of Violation NOV# RWH0007069, violation 1 of 2, it is my decision to reduce the four seriousness points to three. Reclamation regulations require that haulroads are properly designed, constructed and maintained in order to ensure environmental protection and prevent and control damage to public and private property. To ensure that haulroads are constructed in accordance with the approved design, “Road Construction Certification” form DMLR-PT-098 must be submitted to the Division. The previous company initiated the

process to certify Internal Haulroad C through the submittal of Application #1004827 for Meg-Lynn Land Company, Inc., P.N. 1101804. Although the company initiated the certification process in the referenced revision, the company never submitted the required "Road Construction Certification" form DMLR-PT-098. There was no offsite impact as a result of this violation, and only a moderate potential exist for environmental impact.

It is my decision to reduce the negligence points from two to one. The company failed to certify Internal Haulroad C in accordance with Section 4VAC25-130-816.151 of the **Virginia Coal Surface Mining Reclamation Regulations** and failed to follow the procedures outlined in DMLR Procedure 3.03.07. According to the regulation and procedure referenced, a qualified registered professional engineer shall certify the construction of a primary road in a report (DMLR-PT-098) to the Division. If the road construction does not correspond with the approved design, the operator is required to address any variation from the approved plans by submitting certification form DMLR-PT-098, indicating "as-built" construction and include the revised design. The previous company initiated the process to certify Internal Haulroad C through the submittal of Application #1004827 for Meg-Lynn Land Company, Inc., P.N. 1101804. Although some field measurements are included for the haulroad, there is no "Road Construction Certification Form" (DMLR-PT-098) or other statement signed by a professional engineer stating that the haulroad was constructed in accordance with the original design or an "as-built" design. Therefore, the company failed to complete the haulroad certification process which included an inspection of the haulroad by a registered professional engineer and the submittal of the certification report of Internal Haulroad C. The operator did demonstrate a certain degree of negligence by failing to provide the required documentation and certification report form.

Violation 1 of 2 was issued on January 10, 2012 with an abatement date of February 2, 2012. Violation 1 of 2 was terminated on February 2, 2012. Therefore good faith points were not recommended and are not awarded. It is my decision to reduce the civil penalty assessment from \$400.00 to \$250.00.

For Notice of Violation NOV# RWH0007069, violation 2 of 2, it is my decision to affirm the five seriousness points. Drainage from the disturbed area is leaving the permit prior to passing through pond SB-9. The violation has the potential for deposition of sediment and water pollution off the permit. The inspector documented minor off site damage to the hydrology.

It is my decision to affirm the two negligence points. The operator failed to ensure that all drainage from the disturbed area was directed to an appropriate drainage structure in accordance with the approved detailed plans.

Violation 2 of 2 was issued on January 10, 2012 with an abatement date of February 2, 2012. Violation 2 of 2 was terminated on February 2, 2012. Therefore good faith points were not recommended and are not awarded. It is my decision to affirm the civil penalty assessment of \$475.00.

Assessment Conference Determination:**Permit No. NOV# RWH0007069, violation 1 of 2 (HR)**

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. <u>History of previous violation</u>	\$ 0.00	\$ 0.00
II. Seriousness Points	4	3
III. Negligence Points	2	1
IV. Good Faith Points	0	0
Total Points:	6	4
Base Penalty:	\$ 400.00	\$ 250.00
History Penalty:	\$ 0.00	\$ 0.00
Total Penalty:	\$ 400.00	\$ 250.00

Permit No. NOV# RWH0007069, violation 2 of 2 (SS)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. <u>History of previous violation</u>	\$ 0.00	\$ 0.00
II. Seriousness Points	5	5
III. Negligence Points	2	2
IV. Good Faith Points	0	0
Total Points:	7	7
Base Penalty:	\$ 475.00	\$ 475.00
History Penalty:	\$ 0.00	\$ 0.00
Total Penalty:	\$ 475.00	\$ 475.00

Conference Officer: _____
James D. Meacham

Date: _____

